



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

May 14, 2008

Mr. Rogers Anderson, Mayor  
1320 West Main Street  
Franklin, Tennessee 37064

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7099 3400 0014 0970 4872**

Subject: DIRECTOR'S ORDER NO. WPC08-0052  
WILLIAMSON COUNTY HIGHWAY DEPARTMENT  
WILLIAMSON COUNTY, TENNESSEE

Honorable Rogers Anderson:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

  
Patrick Parker, Manager  
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – NRS-Ben Brown  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

|                                         |   |                                                |
|-----------------------------------------|---|------------------------------------------------|
| <b>IN THE MATTER OF:</b>                | ) |                                                |
|                                         | ) |                                                |
| <b>WILLIAMSON COUNTY<br/>GOVERNMENT</b> | ) | <b>DIVISION OF WATER<br/>POLLUTION CONTROL</b> |
|                                         | ) |                                                |
| <b>RESPONDENT</b>                       | ) | <b>CASE NUMBER WPC08-0052</b>                  |
|                                         | ) |                                                |

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

**II.**

Williamson County Government (hereinafter the "Respondent") operates the Williamson County Highway Department and is engaged in construction activities adjacent to the intersection of Clovercroft Road and Williams Road in Williamson County (hereinafter the "site"). Service of process may be made on the Respondent through Rogers Anderson, County Mayor, at 1320 West Main Street, Franklin, Tennessee 37064.

## **JURISDICTION**

### **III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### **IV.**

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

### **V.**

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## VI.

The unnamed tributary to Mill Creek, described herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife. Additionally, Mill Creek and its unnamed tributaries are listed as Exceptional Tennessee Waters (ETW) due to the presence of the federally listed endangered species *Orconectes shoupi*, the Nashville Crayfish.

## FACTS

## VII.

On January 7, 2008, the Respondent submitted an application to the division’s Natural Resources Section (NRS), requesting written authorization under the General ARAP for Construction and Removal of Minor Road Crossings, regarding the widening of an existing bridge and a planned temporary crossing of an unnamed tributary to Mill Creek. On January 17, 2008, the division informed the Respondent that the application was incomplete and requested the submittal of additional information prior to continued review of the application. The Respondent was additionally informed that the Mill Creek watershed is known habitat for the Nashville Crayfish and any aquatic alterations within the watershed must conform to United States Fish and Wildlife Service (USFWS) and United States Army Corp of Engineers (USACOE) guidelines. The Respondent was also provided specifications for projects to be conducted in the Mill Creek watershed.

## **VIII.**

On January 28, 2008, the Respondent informed the division that construction of the crossing had already begun. The Respondent submitted photographs showing that a temporary crossing had been constructed on the unnamed tributary. The Respondent was asked to cease further activities until a meeting to discuss site conditions and USFWS, USACOE, and division requirements could be conducted.

## **IX.**

On February 7, 2008, division personnel conducted a site inspection and noted that a pipe had been installed in the temporary crossing, causing sediment to be discharged from the adjacent active construction into the unnamed tributary, resulting in a condition of pollution.

## **X.**

On February 29, 2008, the division issued a Notice of Violation (NOV) to the Respondent for the violations noted during the February 7, 2008 site inspection. The division made recommendations regarding Best Management Practices (BMP) for completion of the project in a manner that would cause minimal impact to the unnamed tributary. The Respondent was remind that all further aquatic alteration activities at the site must conform to the USFWS and USACOE guidelines regarding the possible presence of the Nashville Crayfish.

## **XI.**

On March 3, 2008, the division issued written ARAP authorization to the Respondent for the completion of the remaining bridge widening activities.

## **XII.**

On April 4, 2008, division personnel conducted a site inspection and noted improvement of the stabilization measures at the temporary road crossing.

## **XIII.**

During the course of investigation, the division incurred damages in the amount of ONE HUNDRED THIRTY TWO DOLLARS AND FORTY FIVE CENTS (\$132.45).

## **VIOLATIONS**

## **XIV.**

By altering waters of the state without authorization under an ARAP, the Respondent has violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

## **XV.**

By causing a condition of pollution in the unnamed tributary to Mill Creek, the Respondent has violated T.C.A. Section § 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER AND ASSESSMENT**

## **XVI.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following Order and Assessment to the Respondent.

1. The Respondent shall, within 60 days of receipt of this Order and Assessment, submit a Corrective Action Plan (CAP) that conforms to USFWS and USACOE guidelines for the removal of the temporary road crossing and the restoration of the affected segment of the unnamed tributary. The CAP shall include details regarding the proposed methods to be used to remove the temporary road crossing and restore the impacted segment to its pre-

alteration condition and a schedule for completion of all activities. The CAP shall be submitted for review and approval to the Natural Resources Section Manager at 7<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243 and a copy to the Water Pollution Control Manager in the Nashville Environmental Field Office (NEFO) at 711 R.S. Gass Boulevard, Nashville, Tennessee 37243. The Respondent shall correct any deficiencies the division finds and submit a corrected CAP within 30 days of notification of any deficiencies.

2. The Respondent shall, within 30 days of receiving approval from the division, initiate the actions outlined in the approved CAP and submit documentation on the date these activities are initiated. This documentation shall be submitted to the NRS and a copy to the NEFO at the respective addresses shown in Item 1.
3. The Respondent shall complete the actions contained in the CAP within the schedule approved by TDEC and submit documentation of completion to the NRS and a copy to the NEFO at the respective addresses shown in Item 1.
4. The Respondent shall pay a CIVIL PENALTY of TEN THOUSAND DOLLARS (\$10,000.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondent shall, within 30 days of entry of this Order, pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00).
  - b. If the Respondent fails to comply with Part XVI, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.
  - c. If the Respondent fails to comply with Part XVI, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.




- d. If the Respondent fails to comply with Part XVI, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00), payable within 30 days of default.
5. The Respondent shall pay DAMAGES to the division in the amount of ONE HUNDRED THIRTY TWO DOLLARS AND FORTY FIVE CENTS (\$132.45) within 30 days of receipt of this Order and Assessment.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 14<sup>th</sup> day of May 2008.

  
Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109, 115 allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the state of Tennessee.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines.

Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to Appeal of an Enforcement Order, TDEC-OGC, 20<sup>th</sup> Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.